

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

JEFFREY HERNEY REALPE,

v.

Case No.: 8:18-cr-150-T-33SPF  
8:20-cv-865-T-33SPF

UNITED STATES OF AMERICA.

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**ORDER**

This matter is before the Court on the United States of America's Motion to Dismiss Jeffrey Herney Realpe's pro se 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence for lack of jurisdiction. (Civ. Doc. # 4). For the reasons that follow, the Motion to Dismiss is granted and Realpe's Section 2255 Motion is dismissed for lack of jurisdiction as successive.

**I. Background**

Pursuant to a plea agreement (Crim. Doc. # 65), Realpe pled guilty to conspiracy to possess with intent to distribute 500 grams or more of cocaine in violation of 21 U.S.C. §§ 846 and 841(b)(1)(B). (Crim. Doc. ## 61, 87). This Court sentenced Realpe to a 63-month term of imprisonment on March 8, 2019. (Crim. Doc. ## 96, 97). Under U.S.S.G. § 2D1.1(b)(1), Realpe

received a two-level enhancement for the possession of a firearm by a coconspirator. (Crim. Doc. # 78 at ¶¶ 14, 20).

On October 3, 2019, Realpe timely filed his first 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence. (Crim. Doc. # 101). In his first Section 2255 motion, Realpe argued that he was entitled to post-conviction relief because of the recent Supreme Court decision in United States v. Davis, 139 S. Ct. 2319 (2019). (Crim. Doc. # 101 at 4). On November 26, 2019, this Court denied Realpe's first Section 2255 motion. (Crim. Doc. # 102).

On April 3, 2020, Realpe filed his second 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence. (Civ. Doc. # 1; Crim. Doc. # 104). On April 22, 2020, the United States filed its Motion to Dismiss this Section 2255 motion, arguing Realpe's motion is an unauthorized successive petition. (Civ. Doc. # 4). Realpe did not respond to the Motion to Dismiss and the time to respond has expired.

## **II. Discussion**

A prisoner who previously filed a Section 2255 motion generally must request and receive permission from the Court of Appeals before filing a second or successive one. See 28 U.S.C. §§ 2244(b)(3)(A) and 2255(h). "Absent such authorization, a district court lacks jurisdiction to

consider such a motion.” Hamilton v. United States, No. 8:06-cr-464-T-17TGW, 2018 WL 5624182, at \*1 (M.D. Fla. July 3, 2018) (citing Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003)).

Realpe has not fulfilled the requirements of the statutes as set out above. Realpe previously filed one unsuccessful Section 2255 motion. (Crim. Doc. # 101). And Realpe has not obtained the Eleventh Circuit’s permission to file a second or successive Section 2255 motion. Realpe’s new Motion constitutes an improper, successive motion pursuant to 28 U.S.C. § 2255. Therefore, this Court lacks jurisdiction to consider Realpe’s second Section 2255 Motion. Accordingly, Realpe’s second Section 2255 Motion is dismissed.

**III. Certificate of Appealability and Leave to Appeal in Forma Pauperis Denied**

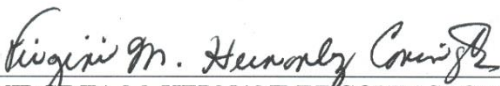
The Court declines to issue a certificate of appealability because Realpe has failed to make a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c)(2). Nor will the Court authorize Realpe to proceed on appeal in forma pauperis because such an appeal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3). Realpe shall be required to pay the full amount of the appellate filing fee pursuant to Section 1915(b)(1) and (2).

Accordingly, it is now

**ORDERED, ADJUDGED, and DECREED:**

- (1) The United States of America's Motion to Dismiss Realpe's Motion to Vacate for Lack of Jurisdiction (Civ. Doc. # 4) is **GRANTED**.
- (2) Jeffrey Herney Realpe's pro se 28 U.S.C. § 2255 Motion to Vacate, Set Aside, or Correct Sentence (Civ. Doc. # 1; Crim. Doc. # 104) is **DISMISSED** for lack of jurisdiction as successive. Such dismissal is without prejudice to Realpe's filing a motion in the Eleventh Circuit for permission to file a successive Section 2255 motion to vacate.
- (3) The Clerk is directed to close this case.

**DONE** and **ORDERED** in Chambers in Tampa, Florida, this 9th day of June, 2020.

  
VIRGINIA M. HERNANDEZ COVINGTON  
UNITED STATES DISTRICT JUDGE